

2012 No. 459

BANK LEVY

The Bank Levy (Double Taxation Arrangements) (Federal Republic of Germany) Regulations 2012

Made - - - - - *21st February 2012*

Laid before the House of Commons *22nd February 2012*

Coming into force - - - *14th March 2012*

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 66(8) and (9) of Schedule 19 to the Finance Act 2011(a).

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Bank Levy (Double Taxation Arrangements) (Federal Republic of Germany) Regulations 2012 and come into force on 14th March 2012.

(2) These Regulations have effect in relation to periods of account ending on or after 1st January 2011.

(3) But regulation 10 has effect in relation to periods of account beginning on or after 14th March 2012.

Interpretation

2. In these Regulations—

“double taxation arrangements” means the Convention and the Protocol;

“Convention” means the Convention between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland for the avoidance of double charging of bank levies signed on 7th December 2011 in London(b);

“German bank levy” means the equivalent foreign levy imposed by the Federal Republic of Germany;

“Protocol” means the Protocol attached to the Convention;

“UK permanent establishment” means a permanent establishment through which a trade is carried on in the United Kingdom by a relevant foreign bank which is a relevant entity or a member of a relevant group.

(a) 2011 c. 11.

(b) The Convention and the Protocol to the Convention are set out in the Schedule to S.I. 2012/432.

Application of these Regulations

3. These Regulations apply in relation to the provision of relief from the bank levy provided by the Convention where the bank levy and the German bank levy are charged in relation to a UK permanent establishment.

Double taxation relief by way of credit

Double taxation relief

4.—(1) Where these Regulations apply, the amount of the German bank levy paid which is attributable to the UK permanent establishment in relation to a chargeable period is allowed as a credit against the bank levy for that chargeable period.

(2) Subject to the provisions of these Regulations, the amount of the bank levy for the chargeable period is reduced by the amount of the credit.

(3) But the amount of the bank levy shall not be reduced to below nil.

(4) The amount of the German bank levy attributable to the UK permanent establishment is the amount determined in accordance with paragraph 1 of the Protocol in relation to the chargeable period.

(5) If a proportion (Z%) of the period in relation to which the German bank levy is calculated falls in any other chargeable period, Z% of the German bank levy shall be attributable to that other period.

Exchange rates

5. For the purposes of regulation 4, the amount of German bank levy is to be translated into its sterling equivalent by reference to the spot rate of exchange for the last day of the chargeable period in relation to which the credit is claimed.

Claim for double taxation relief

General time limit for making a claim

6.—(1) A claim for credit under regulation 4(1) must be made not more than—

(a) four years after the end of the accounting period in relation to which the bank levy is treated as an amount of corporation tax chargeable on the responsible member (see paragraph 50 of Schedule 19 to the Finance Act 2011) or the relevant entity (see paragraph 51 of that Schedule), or

(b) if later, one year after the end of the accounting period in which the German bank levy is paid.

(2) If the chargeable period in relation to which the bank levy is charged falls in more than one accounting period, the accounting period referred to in paragraph (1)(a) shall be the latest of those periods.

Relevant groups: responsible member to make claim

7. Where the bank levy is charged as provided for by paragraph 4 of Schedule 19 to the Finance Act 2011 (bank levy to be charged in relation to certain groups of entities) any claim for credit under regulation 4(1) must be made by the responsible member.

Restriction of credit

8.—(1) The credit under regulation 4(1) is only available to reduce the amount of the bank levy so far as it is attributable to chargeable equity and liabilities of the UK permanent establishment.

(2) Bank levy is to be attributed for the purposes of paragraph (1) on a just and reasonable basis.

Reduction in credit: payment by reference to German bank levy

9.—(1) Paragraph (2) applies if—

- (a) credit for the German bank levy is to be allowed to an entity under these Regulations, and
- (b) a payment is made by a tax authority to that entity, or to any other person, by reference to the German bank levy.

(2) The amount of the credit must be recalculated under regulation 4 reducing the amount of the German bank levy by reference to the payment referred to in paragraph (1)(b).

Priority of credits

10.—(1) Where credits are allowed in relation to equivalent foreign levies (including the German bank levy) under these Regulations and under any Regulations made under paragraph 66 (arrangements affording double taxation relief) or paragraph 67 (power to provide for double taxation relief) of Schedule 19 to the Finance Act 2011, the credits apply to reduce the bank levy in the order specified in paragraph (2), subject to paragraphs (3) and (4).

(2) The order is—

First, any credit allowed in relation to the equivalent foreign levy imposed by the law of the foreign territory in which the parent entity is resident.

Second, any credit allowed in relation to the equivalent foreign levy imposed by the law of the foreign territory in which a direct subsidiary (“the first subsidiary”) is resident or a permanent establishment of the parent entity is located.

Third, any credit allowed in relation to an equivalent foreign levy imposed by the law of the foreign territory in which a direct subsidiary (“the second subsidiary”) is resident or a permanent establishment of the first subsidiary is located.

Fourth, any credit allowed in relation to an equivalent foreign levy imposed by the law of the foreign territory in which a direct subsidiary of the second subsidiary is resident or a permanent establishment of the second subsidiary is located, and so on in relation to any fourth and further subsidiaries.

(3) If an entity has direct subsidiaries (“the elected subsidiaries”) in more than one foreign territory which imposes an equivalent foreign levy, the responsible member shall elect as to the order (“the elected order”) in which the credits allowed in relation to the equivalent foreign levies shall be applied.

(4) If any of the elected subsidiaries themselves have direct subsidiaries in more than one foreign territory which imposes an equivalent foreign levy, paragraphs (2) and (3) shall apply to those direct subsidiaries in the elected order and paragraph (1) shall apply as if each elected subsidiary were a parent entity.

(5) For the purposes of this regulation, where an equivalent foreign levy is not imposed by the law of the foreign territory in which an entity (“E”) is resident, any direct subsidiary of E shall be treated as the direct subsidiary of the entity which is the parent entity of E.

Action after adjustment of amount payable by way of bank levy or German bank levy

Consequences of adjustment of the bank levy or German bank levy

11.—(1) Paragraph (2) applies to a claim or assessment if—

- (a) the amount of credit given under regulation 4 is reduced under regulation 9, or becomes excessive or insufficient by reason of any adjustment of the amount of any bank levy or German bank levy,
- (b) the reduction or adjustment gives rise to the claim or assessment, and
- (c) the claim or assessment is made not later than 6 years from the time when all material determinations have been made, whether in the UK or elsewhere.

(2) Nothing in the Tax Acts limiting the time for the making of assessments, or limiting the time for the making of claims for relief, applies to the assessment or claim.

(3) In paragraph (1)(c) “material determination” means an assessment, reduction, adjustment or other determination that is material in determining whether any, and (if so) what, credit is to be given.

Duty to give notice that adjustment has rendered credit excessive

12.—(1) This regulation applies if—

- (a) any credit has been allowed under regulation 4, and
- (b) later, the amount of that credit is reduced under regulation 9, or becomes excessive as a result of an adjustment of the amount of the German bank levy.

(2) The relevant entity or, in the case of a relevant group, the responsible member must give notice that a reduction has been made or that the amount of the credit has become excessive as a result of the making of an adjustment.

(3) Notice under paragraph (2) is to be given—

- (a) to an officer of Revenue and Customs, and
- (b) within one year from when the reduction or adjustment is made.

Cases about being taxed otherwise than in accordance with the Convention

Giving effect to solutions to cases and mutual agreements resolving cases

13.—(1) Paragraphs (2) and (4) apply if under, and for the purposes of, the double taxation arrangements—

- (a) an entity presents, to the Commissioners for Her Majesty’s Revenue and Customs or to a competent authority in the Federal Republic of Germany, a case concerning the entity’s being taxed (whether in the United Kingdom or the Federal Republic of Germany) otherwise than in accordance with the double taxation arrangements, and
- (b) the Commissioners arrive at a solution to the case or make a mutual agreement with a competent authority in the Federal Republic of Germany for the resolution of the case.

(2) The Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and any such adjustment as is appropriate in consequence may be made.

(3) An adjustment under paragraph (2) may be made by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise.

(4) A claim for relief under any provision of the Tax Acts or the enactments relating to capital gains tax may be made in pursuance of the solution or mutual agreement at any time before the end of the period of 12 months following the notification of the solution or mutual agreement to the entity affected, even if that involves making the claim after a deadline imposed by another enactment.

(5) In this regulation “competent authority in the Federal Republic of Germany” means the Federal Ministry of Finance or the agency to which it has delegated its powers.

Effect of, and deadline for, presenting a case

14.—(1) This regulation applies to the presentation of a case concerning an entity’s being taxed (whether in the United Kingdom or the Federal Republic of Germany) otherwise than in accordance with the double taxation arrangements.

(2) The presentation of any such case under and in accordance with the double taxation arrangements—

- (a) does not constitute a claim for relief under the Tax Acts or the enactments relating to capital gains tax, and
- (b) is accordingly not subject to section 42 of the Taxes Management Act 1970^(a) or any other enactment relating to the making of such claims.

(3) Any such claim must be presented before the end of the later of—

- (a) the period of 3 years following the first notification of the action resulting in the entity being charged otherwise than in accordance with the double taxation arrangements, and
- (b) the period of 6 years following the end of the chargeable period to which the case relates.

Angela Watkinson

Michael Fabricant

21st February 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to relief from double taxation in relation to the bank levy and any tax imposed by the Federal Republic of Germany which corresponds to the bank levy (“the German bank levy”).

Regulation 1 provides for citation commencement and effect. Authority for the retrospective effect of the Regulations (except for regulation 10) is provided by section 66(5) and (8) of the Finance Act 2011. Section 66(5) permits arrangements for relief from double taxation in relation to the bank levy and any equivalent foreign levy to have retrospective effect. These Regulations make provision in relation to such relief provided by the Convention between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland for the avoidance of double charging of bank levies (“the Convention”; defined in regulation 2) which enters into force on the day of exchange of instruments of ratification and has effect from 1st January 2011. The date of entry into force of the arrangements will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

Regulation 2 defines terms used in the Regulations.

Regulation 3 provides that the Regulations apply in relation to relief from the bank levy provided by the Convention where the bank levy and the German bank levy are charged in relation to a UK permanent establishment (which is defined in regulation 1 as a permanent establishment through which a trade is carried on in the United Kingdom by a relevant foreign bank).

Regulation 4 provides that the amount of the German bank levy that is attributable to the UK permanent establishment in relation to a chargeable period is allowed as a credit to reduce the amount of the bank levy (but not to below nil) for that period.

(a) 1970 c. 9.

Regulation 5 provides for the exchange rate to translate the amount of the German bank levy into its sterling equivalent.

Regulation 6 provides for the time limits for making a claim for a credit under regulation 4.

Regulation 7 provides that where the bank levy is charged in relation to a relevant group a claim for credit must be made by the responsible member.

Regulation 8 provides that the credit is only available to reduce the amount of the bank levy charged in respect of the UK permanent establishment; this amount is determined on a just and reasonable basis.

Regulation 9 provides for a reduction in the credit if a payment is made in respect of a credit for the German bank levy.

Regulation 10 makes provision for priority of credits where credits are allowed in relation to equivalent foreign levies (including the German bank levy) under these Regulations and under any Regulations made under paragraph 66 (arrangements affording double taxation relief) or paragraph 67 (power to provide for double taxation relief) of Schedule 19 to the Finance Act 2011.

Regulation 11 makes provision in relation to a claim or assessment made in consequence of an adjustment of the bank levy or the German bank levy.

Regulation 12 makes provision for a notice to be given where in consequence of an adjustment of the bank levy or the German bank levy the credit given under regulation 4 has become excessive.

Regulation 13 provides for giving effect to solutions to cases and mutual agreements resolving cases by the Commissioners for Her Majesty's Revenue and Customs or to a competent authority in the Federal Republic of Germany resulting in a person's being taxed (whether in the United Kingdom or the Federal Republic of Germany) otherwise than in accordance with the double taxation arrangements.

Regulation 14 makes provision in relation to the effect of, and the deadline for, presenting a case concerning an entity's being taxed (whether in the United Kingdom or the Federal Republic of Germany) otherwise than in accordance with the double taxation arrangements.

A Tax Information and Impact Note covering this instrument was published on 23 March 2011 alongside draft legislation for the Bank Levy and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.